

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ARcare, Inc., on behalf of itself and all  
others similarly situated,

Plaintiff,

v.

Cynosure, Inc.,

Defendant.

No. 1:16-cv-11547-DPW

**SUPPLEMENTAL DECLARATION OF ZACHARY COOLEY**

**RE: NOTICE PROCEDURES**

I, Zachary Cooley, declare as follows:

1. I am employed as a Project Manager by KCC Class Action Services, LLC (“KCC”), located at 462 South 4th Street, Louisville, KY 40202. KCC was appointed as the Settlement Administrator in this matter and is not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. This declaration supplements my previous declaration for the purpose of updating the Court and the Parties on administration activities.

**Claim Forms Received**

3. To date, KCC has received 12,204 timely claim forms submitted and 46 late claim forms. KCC has completed the processing of all claims received to date. Of the 12,250 received claims, 6,851 claims have one or more valid faxes claimed. These 6,851 claims have claimed 7,624 total valid fax numbers. Of the 6,851 valid claims, 401 have claimed two or more valid fax numbers.

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2 **Preliminary Settlement Award Calculations**

3           4.       KCC has preliminarily calculated the Class Member settlement awards for the  
4 6,851 class members. These calculations are based on the assumptions that the gross settlement  
5 amount is \$8,500,000.00 and, from that amount, deductions are made for: (a) attorneys' fees costs  
6 (\$2,125,000.00); (b) attorneys' costs (unknown at this time); (c) named plaintiff award  
7 (\$5,000.00); and (c) administration costs (\$264,556.00 - \$281,895.00) (see administration costs  
8 section below). The remaining amount (\$6,105,444.00 - \$6,088,105.00 the "Net Settlement  
9 Fund") will be allocated pursuant to the terms of the settlement to those Class Members who filed  
10 claims with valid fax numbers. Currently, the payment per valid fax is calculated to be between  
11 \$805.52 and \$807.81 (Net Settlement Amount / Unique Valid Faxes Claimed (7,558)). In the  
12 event a valid fax was claimed by more than one entity, the payment amount for the valid fax will  
13 be split equally amongst all parties claiming said valid fax. Should the Court-awarded fees or  
14 costs differ than those shown above or if the list of Class Members approved for payment and/or  
15 their class data changes, the estimated payment calculations will change accordingly.

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18 **Administration Costs**

19           5.       As of the date of this declaration, KCC states its total cost of administration to date  
20 to be \$223,295.03. The costs account for the fax notice campaign, both paper notice campaigns,  
21 claims processing work, website hosting and setup as well as future funds management and  
22 distribution work. A copy of the current invoice to date has been filed under seal as it contains  
23 proprietary information regarding KCC's billing practices.

24           6.       The federal annual tax reporting threshold is \$600.00.

25           7.       If the claimants are paid their total settlement award assuming the numbers in  
26 paragraph 4 above, that payment would be more than the tax reporting threshold. Since these  
27 payments exceed the threshold, 1099 miscellaneous forms would need to be issued with the check  
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1 awards if a payment over \$600 is made in a particular tax year. To issue these tax documents,  
2 KCC would need to solicit Tax ID's from the class members. This process would take  
3 approximately three to four months according to the Scenario A found below.

4 8. Alternatively, KCC could make a first distribution of \$590.00 in 2019 and the  
5 balance in a second distribution in 2020 which would also distribute residual funds from  
6 uncashed checks from the first distribution as contemplated by the Agreement. This would avoid  
7 the time and expense of the W-9 process for all of the class members who claimed one valid fax  
8 number. In order to distribute prior to the end of the year, the Settlement Fund would need to  
9 receive payment by December 2, 2019.

10 9. At the request of Class Counsel, KCC has prepared two cost to complete estimates  
11 based on the following scenarios:

12 **Distribution Scenario A**

13 KCC is to mail W9 Solicitation Letters to all class members whose claims contained valid faxes  
14 numbers. The class members will be given 30 days to respond to the letter. KCC will process any  
15 letters received and verify the information provided by the class member. After the 30-day period,  
16 KCC will prepare a list of the class members whose provided information was able to validate  
17 and a separate list of class members who either did not respond or responded with invalid  
18 information. The list of valid class members will be sent their full Settlement Amount while the  
19 list of invalid or no response class members will be sent another W9 Solicitation Letter giving  
20 them another 30-day response period. KCC will follow the same protocol established above to  
21 determine if the information provided is valid or invalid and will generate the new lists. KCC will  
22 then pay the valid list and will prepare the invalid and no response list for one final mailing  
23 giving the class member one additional 30-day window to respond to the letter and follow the  
24 established payment protocol. If after these three attempts the class member fails to provide a Tax  
25 ID that matches with the IRS database, the funds will be returned to the general pool of funds and  
26 be eligible for any residual distributions or cy pres payments. KCC estimates this Distribution  
27 Scenario would cost \$281,894.92 to complete. An itemization of the Scenario A Cost to Complete  
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has been filed under seal as it contains proprietary information regarding KCC's billing practices. Any residual distributions thereafter performed by KCC would be in addition to the cost listed above and would need to be reserved prior to further distributions occurring.

**Distribution Scenario B**

KCC will prepare a check distribution for all 6,851 class members who have submitted valid claims. This check distribution will occur in this taxable year in the amount of \$590.00. The residual amount due to the class member will be paid in the next taxable year. Along with the check packet, KCC will insert W9 Solicitation Letters for class members that have claimed two or more valid faxes. Class members will have a set determined time to cash their checks and respond to the W9 solicitation. KCC will validate the returned W9 and if the Tax ID does validate with the IRS database, the class member will be able to receive their entire allotment when the 2<sup>nd</sup> distribution occurs in the next taxable year. In the event the Tax ID does not validate, KCC will attempt to contact the class member to cure the deficiency prior to the second distribution occurring via the contact information collected in the letter. If KCC is unable to validate the Tax ID, the class member will receive \$590.00 again and the remainder of their award will return to the general pool of funds and be eligible for any residual distributions or cy pres payments. KCC estimates this Distribution Scenario would cost \$264,555.80 to complete. An itemization of the Scenario B Cost to Complete has been filed under seal as it contains proprietary information regarding KCC's billing practices. Any further residual distributions performed by KCC would be in addition to the cost listed above and would need to be reserved prior to the distribution occurring.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 15<sup>th</sup> day of October, 2019 at Louisville, Kentucky.

  
ZACHARY COOLEY